

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ALCATEL-LUCENT USA, INC.

Plaintiff,

vs.

AMAZON.COM., INC., et al

Defendants.

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**CASE NO. 6:09-CV-422
PATENT CASE**

ORDER

Before the Court is Defendant Overstock.com Inc.'s ("Overstock") Motion to Sever or Separate Amazon.com, Inc.'s ("Amazon") Patent Infringement Counterclaims (Doc. No. 439). The Court heard argument at the September 22, 2011 pretrial hearing.

As an initial matter, the Court commends the parties for narrowing the issues and compromising to promote the efficient and economical resolution of this matter. The Court notes that Alcatel and Amazon had already agreed to narrow the number of patents asserted in the first trial (Doc. No. 223), and all parties agreed at the pretrial hearing to evaluate the relative strength of their willfulness allegations and consider dropping them before trial.

The Court is encouraged that Defendants were able to share the exceedingly expensive costs of retaining some experts in this matter (among other things), and as a result, have streamlined the issues and most likely saved all parties from duplicative expert discovery, depositions and fees.

That said, Overstock has raised a compelling argument regarding severance or separation of Amazon's patent infringement counterclaims. (Doc. No. 439). Alcatel has asserted three patents against all Defendants generally related to the functions performed by e-commerce websites.

Amazon's counterclaim patents are directed at ethernet switches and routers. The Amazon and Alcatel patents involve distinctly different technologies and presenting them in a single trial creates a high risk of juror confusion. Indeed, Amazon was inclined to hire a separate experts to opine on the counterclaim patents. Accordingly, the Court **GRANTS** Overstock's motion and Amazon's counterclaims of patent infringement of US Patent Nos. 6,049,524 and 6,490,246 are severed and will be tried separately.

The trials will proceed as follows:

- **October 3, 2011:** Jury selection will be conducted for both trials and the parties will select separate juries;
- **October 11-14 and 17, 2011:** First trial involving all parties;
- **October 19-20, 2011:** Second trial involving only Alcatel and Amazon.

The Court also provides the following time allotments (per side) for each trial:

- Voir Dire:
 - ▶ First Trial: **30 minutes**
 - ▶ Second Trial: **15 minutes**
- Opening Statements:
 - ▶ First trial: **Plaintiff, 30 minutes; Defendants, 40 minutes**
 - ▶ Second trial: **15 minutes**
- Evidence, Direct and Cross-Examination:
 - ▶ First trial: **12 hours**
 - ▶ Second trial: **3 hours**
- Closing:
 - ▶ First trial: **45 minutes**
 - ▶ Second trial: **30 minutes**

The parties are advised that the time limits apply to all issues, jury and non-jury, including all equitable issues and willfulness. The parties are encouraged to budget their time accordingly.

So ORDERED and SIGNED this 23rd day of September, 2011.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**